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SUPERIOR COURT FOR THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

**JULEUS CHAPMAN, a minor, by his guardian ad
litem Monique Chapman, et al., on behalf of
themselves and all individuals similarly situated,**

Plaintiffs,

v.

**CALIFORNIA DEPARTMENT OF EDUCATION;
CALIFORNIA BOARD OF EDUCATION; JACK
O'CONNELL, in his capacity as Superintendent of
Public Education in California,**

Defendants.

CASE NO. 2002049636

SETTLEMENT AGREEMENT

1 Plaintiff class representatives, Carly Simon, a minor, by her guardian ad litem, Diane Davis;
2 Meyshe Shapiro-Nygren, a minor, by his guardian ad litem, Tobie Shapiro; Juleus Chapman, a
3 minor, by his guardian ad litem, Monique Chapman; Ryan Smiley, a minor, by his guardian ad
4 litem, Krista Smiley; Jennifer Lyons, a minor, by her guardian ad litem, Susan Lyons; Ashley
5 Harley, a minor, by her guardian ad litem, Jacqueline Harley; Philip Cacho, a minor, by his
6 guardian ad litem, Ann McDonald-Cacho; Kyle Stofle, a minor, by his guardian ad litem, Karen
7 Bruno; Justin Pierce, a minor, by his guardian ad litem, Melody Arevalo; Ashton Thadani, a
8 minor, by his guardian ad litem, Louise Dutka, on behalf of themselves and all other individuals
9 similarly situated and all class members (plaintiffs), and their attorneys, Disability Rights
10 Advocates, in the action of *Chapman, et al. v. the California Department of Education, et al.*,
11 Alameda County Superior Court, Case No. 2002049636 (action) and defendants, the California
12 Department of Education (CDE), the California State Board of Education (SBE), and the
13 Superintendent of Public Education (defendants), enter into this settlement agreement and hereby
14 agree as follows:

15 1. Defendants agree to propose and support legislation that, once enacted, would create a
16 procedure for certain students with disabilities in the Class of 2006 who have not passed both
17 parts of the California High School Exit Exam (CAHSEE) and who are not eligible for a local
18 waiver pursuant to Education Code section 60851 for the part(s) not yet passed. Under the
19 procedure, qualifying students from the Class of 2006 would not be required to pass the
20 CAHSEE in order to receive a high school diploma. The procedure would remain in effect until
21 and including December 31, 2006. As set forth below, a school district will submit a request to
22 the California State Board of Education (SBE) that the CAHSEE requirement be excused as to a
23 particular student, and the SBE will approve such a request, if all of the following criteria have
24 been satisfied:

- 25 (a) the student has an existing IEP or Section 504 Plan;
- 26 (b) according to the student's IEP or Section 504 Plan, dated on or before July 1,
27 2005, the student was on high school diploma track with an anticipated graduation from high
28 school in 2006;

1 (c) the student's school district has certified that the student has satisfied all other
2 state and local requirements for the receipt of a 2006 high school diploma;

3 (d) the student has taken the part(s) of the CAHSEE (ELA or mathematics), that the
4 student has not yet passed, at least twice beyond the 10th grade, including at least once during his
5 or her senior year with those accommodations and/or modifications, if any, specified in the
6 student's IEP or Section 504 Plan, and the student has not received a score of 350 or above on
7 the section(s) for which a request is being submitted under this paragraph;

8 (e) the student's school district has certified either that: (1) the student has availed
9 him or herself of targeted remedial instruction focused on the CAHSEE, either through the
10 student's school (as provided in Education Code section 60851, subdivision (f)) or from a private
11 tutor or other means; or (2) the school district failed to provide the student with the opportunity
12 to receive such remedial or supplemental instruction during the student's senior year;

13 (f) if the student received remedial or supplemental instruction, as set forth in
14 paragraph 1(e)(1), above, the student has taken the CAHSEE at least once following the receipt
15 of such remedial or supplemental instruction; however, if following the receipt of such remedial
16 or supplemental instruction there is no further administration of the CAHSEE on or before
17 December 31, 2006, this sub-division 1(f) shall not apply; and

18 (g) The student, and the student's parent(s) or legal guardian(s) if the student is a
19 minor, have acknowledged in writing that the student is entitled to receive free appropriate
20 public education up to and including the academic year during which the student turns 22 years
21 old, or until the student receives a high school diploma, whichever occurs first.

22 2. If (a) on or before September 9, 2005, the California State Legislature passes a bill that
23 would have the effect of excusing, for at least some students with disabilities who are in the
24 Class of 2006, the requirement that they pass or satisfy the CAHSEE to obtain a high school
25 diploma (hereinafter, a "CAHSEE Bill"); (b) the Governor signs or allows that bill to become
26 law; and (c) the parties agree that the bill contains substantively at least the same components set
27 forth in paragraph 1, then the parties shall jointly stipulate to entry of an order:

28 (i) staying this action in its entirety for the class members of the Class of 2006 until

1 and including December 31, 2006 (the last date upon which any student subject to this agreement
2 could satisfy the requirements set forth herein);

3 (ii) staying this action for all other class members until and including September 30,
4 2006, except that the parties may:

5 (a) Serve interrogatory requests, request for productions of documents and things,
6 requests for admission, and no more than four deposition notices on or after August 1, 2006;

7 (b) Any substantive written discovery responses shall be due on the later of
8 September 30, 2006 or the deadlines set by the California Code of Civil Procedure. Provided
9 that plaintiffs serve written discovery on August 1, 2006, any objections to such written
10 discovery requests shall be due on August 21, 2006.

11 (c) The parties will meet and confer to schedule any depositions to take place, if
12 reasonably possible, between September 1, 2006 and October 20, 2006;

13 (d) On or after June 1, 2006, plaintiffs may informally request (without the need
14 for formal requests for production of documents) that defendants produce copies of any reports
15 or studies in their possession that were generated on or after October 1, 2005, and that (1)
16 discuss or analyze issues relating to implementation of the CAHSEE for students with
17 disabilities; (2) are in final, rather than draft, form; (3) contain only nonconfidential, public
18 information; and (4) are not available on the Internet. Defendants shall produce any such
19 documents unless they believe that there is good cause not to do so, in which case defendants
20 shall identify any documents being withheld on this basis.

21 If this paragraph 2 becomes operative, neither the named plaintiffs nor any of their agents,
22 attorneys, successors, assigns, representatives nor anyone acting or purporting to act on their
23 behalf, shall bring any other lawsuit concerning any related or similar claims to those asserted in
24 this action until on or after January 1, 2007.

25 3. If (a) on or before September 9, 2005, the California State Legislature passes a
26 CAHSEE Bill; (b) the Governor signs or allows that bill to become law, and (c) the parties do
27 not agree on whether the bill contains substantively at least the same components set forth in
28 paragraph 1, then the parties shall promptly meet and confer in an attempt to resolve their

1 dispute. If the parties are unable to agree on a course of action, then the parties shall submit to
2 the Court the question of whether the bill contains substantively at least the same components set
3 forth in paragraph 1; alternatively, the parties may agree to submit the question for binding
4 mediation before a mediator upon which they both shall agree.

5 (i) If the Court (or mediator) determines that the law does contain substantively at
6 least the same components set forth in paragraph 1, then the parties shall stipulate to a stay of
7 litigation as provided in paragraph 2, and plaintiffs and their attorneys shall agree that neither
8 named plaintiffs nor any of their agents, attorneys, successors, assigns, representatives nor
9 anyone acting or purporting to act on their behalf, shall bring any other lawsuit concerning any
10 related or similar claims to those asserted in this action until on or after January 1, 2007.

11 (ii) If the Court (or mediator) determines that the law does not contain substantively at
12 least the same components set forth in paragraph 1, then the parties shall promptly meet and
13 confer on what additional procedures, if any, may be appropriate. If the parties are unable to
14 agree, then this settlement agreement shall be considered null, void and of no effect, and the
15 parties shall be under no obligation to perform under the settlement agreement.

16 4. If, on or before September 9, 2005, the California State Legislature fails to pass a
17 CAHSEE Bill, or if the Legislature does pass a bill on or before that date but the Governor
18 vetoes it, then this settlement agreement shall be considered null, void and of no effect, and the
19 parties shall be under no obligation to perform under the settlement agreement.

20 5. Nothing in this settlement agreement shall limit the rights of any named plaintiff,
21 aggrieved individual, or class member to bring any action directly against any school district
22 based on its alleged failure to follow any applicable law.

23 6. This settlement agreement among the parties shall not be cited or relied upon by any of
24 the parties in this or in any other litigation or proceeding, or admissible in this or any other
25 litigation or proceeding, except for the limited purpose of enforcing this agreement.

26 7. The parties recognize and mutually agree that the entry into this settlement agreement
27 shall not represent an admission by any of the parties in this action with respect to any of the
28 substantive allegations made in this action.

1 8. The parties recognize and mutually agree that it is the express intention of the parties
2 that this settlement agreement does not include claims, if any, which may arise from or be based
3 upon a breach of any provision of this settlement agreement.

4 9. The parties to this settlement agreement recognize and mutually agree that the terms
5 set forth in this settlement agreement constitute the entire and binding settlement agreement
6 among the parties with respect to the matters discussed herein. The parties further recognize and
7 mutually agree that no other statement or representation, either written or oral, express or
8 implied, has been received or relied upon in this settlement agreement, and that all prior
9 discussions, statements, and negotiations made or which occurred prior to the date of this
10 settlement agreement shall be merged into this settlement agreement.

11 10. The parties to this settlement agreement recognize and mutually agree that the terms set
12 forth in this settlement agreement are the product of the parties' mutual negotiation and
13 preparation and accordingly shall not be deemed to have been prepared or drafted exclusively by
14 any party. The parties further agree that any court seeking to interpret this settlement agreement
15 should construe it as the product of mutual negotiation and preparation.

16 11. The terms of this settlement agreement are contractual and are not mere recitals.

17 12. The undersigned and their counsel represent that they have the full power and
18 authority to execute this settlement agreement on the parties' respective behalf and to bind the
19 parties.

20 13. Plaintiffs specifically reserve the right to seek attorneys' fees and costs on any basis
21 allowed by law. Defendants specifically reserve the right to object to any such request on any
22 basis allowed by law.

23 14. Promptly after the Governor signs a CAHSEE Bill as described in paragraphs 2 and 3
24 above, defendants shall provide notice of the procedure to all district designated test
25 coordinators, SELPA directors, superintendents and high school principals. In addition, CDE
26 shall post information about the procedure on its website. The notice shall describe the
27 procedures that the districts should utilize in making a request that the CAHSEE requirement be
28 excused as to a particular student. In addition, the notice shall state that parents may utilize the

1 Special Education Complaint process (see tit. 5, Cal. Code Regs., § 4600 et seq.) if any school or
2 district: (a) fails to provide a student with disabilities an opportunity to take the CAHSEE with
3 an accommodation or modification in their IEP during their senior year, as set forth in paragraph
4 1(d); (b) fails to provide the certifications described in paragraphs 1(c) and 1(e), even though the
5 conditions for such certifications have been satisfied; or (c) fails to submit a request, at the
6 student's request (or at the parent's or legal guardian's request if the student is a minor), that the
7 CAHSEE requirement be excused as to a particular student with disabilities, even though the
8 requirements set forth in paragraph 1(a)-(g) have been satisfied.

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15. This settlement agreement may be signed in counterparts.

IT IS SO STIPULATED.

Dated

SIDNEY WOLINSKY
Disability Rights Advocates
For: Plaintiffs

Dated

Defendant California State Board of
Education
Title:

Dated

Defendants California Department of
Education and Jack O’Connell,
Superintendent of Public Education in
California
Title:

Dated

DOUGLAS M. PRESS
KARA READ-SPANGLER
KARIN S. SCHWARTZ
Deputies Attorney General
Attorneys for Defendants

IT IS SO ORDERED

Dated: _____

Judge of the Superior Court